John A. DeTore, Esquire
Rubin and Rudman LLP
50 Rowes Wharf
Boston, MA 02110-3319

RE: D.T.E. 99-84 (Compliance Filing dated January 28, 2002)

Dear Mr. DeTore:

On June 29, 2001, the Department of Telecommunications and Energy ("Department") directed Bay State Gas Company ("Bay State" or "Company") to file a service quality plan ("SQ plan") that complies with the generic guidelines established by the Department ("Guidelines"). Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84, at 41-42 (June 29, 2001). On October 22, 2001, Bay State filed a motion seeking clarification of the Guidelines regarding staffing levels ("Motion"). On October 31, 2001, the Utility Workers Union of America ("UWUA") responded to the Motion ("Response"). Notwithstanding its pending Motion, on November 5, 2001, Bay State filed a proposed SQ plan that applied the Guidelines. On November 14, 2001, UWUA filed comments on Bay State's SQ plan ("Comments").

At the request of the Department and to comply with the Guidelines, the Company made revisions to its proposed SQ plan.[1] The Department required the revisions to enhance consistency between Bay State's SQ plan with the SQ plans of all the other gas distribution companies as well as with the SQ plans for all electric distribution companies. The Department has reviewed the Company's final SQ plan. We conclude that the SQ plan incorporates the Guidelines and the directives in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84-B, Order on Motion For Clarification

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[1] The Company filed final revisions on January 28, 2002.

(September 28, 2001) in all but two areas: (1) telephone service for emergency calls; and (2) staffing level benchmarks.[2]

Telephone Service

Regarding telephone service for emergency calls, Bay State did not incorporate the 20-second reporting requirement set forth in the Guidelines at II.A for answering emergency calls (Bay State SQ plan at II.A.) Bay State claims the cost to update the system to perform this function, which it estimates to be $50,000 - 60,000, is too expensive (id.). Bay State proposes to record and report emergency calls using its current 30-second measurement until such time that the Company is able to identify a more cost-effective method to report pursuant to the Department's 20-second standard (id.).

UWUA argues that a standard 20-second response to emergency calls for all gas companies is important to protect public safety and permits meaningful comparison of a gas distribution company's performance in this category to the other gas distribution companies' performances (UWUA Comments at 2-3). Therefore, UWUA urges the Department to require Bay State to report back what cost-effective alternatives are available to upgrade the system (id. at 3).

Bay State's proposal provides neither a reasonable time period for resolution of the problem nor even a plan to identify a solution to this problem.[3] Moreover, the Company presented no evidence that the cost to update the system is too costly for a company of Bay State's size and asset base. Bay State's operating revenues are $394 million and its plant investment is $1.226 billion (including annual capital additions of $33 million).[4] Therefore, the Department rejects Bay State's proposal regarding the Telephone Service Factor.

Staffing Levels

Regarding the Staffing Level Benchmark, Bay State's SQ plan at IV includes the same language as the Guidelines at § IV and the same as all other distribution companies: "Consistent

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2 The SQ plan also is consistent with the SQ plans of all other gas and electric distribution companies but for these two topics.

3 In D.T.E. 99-84, at 2-3 (August 17, 2000), the Department stated that any entity requesting deviation(s) from the Guidelines bears the burden of demonstrating why the deviation is necessary.

4 Bay State's estimated cost of $50-60,000 represents approximately 0.18 percent of the Company's annual capital additions.

with G.L. c. 164, § 1E, staffing benchmarks will be established on a company-specific basis and will be determined by the then-effective collective bargaining agreement for each Company." Bay State adds a footnote, however, that states "Bay State maintains that G.L. c. sec. 1E(b) exempts it from the requirement that distribution companies submit SQ plans with staffing level benchmarks based on staffing levels in existence on November 1, 1997" (Bay State SQ plan at IV, n.1).

Bay State's proposed footnote is consistent with the position outlined in its Motion, seeking clarification of the Guidelines regarding staffing levels. In that Motion, Bay State argues that it is exempt from the directive to file an SQ plan containing a staffing level benchmark tied to November 1, 1997 levels (Motion at 4). Bay State relies on G.L. c. 164, § 1E(b), arguing that the requirement that the staffing levels be set at or above November 1, 1997 levels only applies to a "distribution, transmission, or gas company that makes a performance based rate filing after the effective date of this act (id.)."

UWUA, however, claims that every distribution company must maintain staffing levels at or above those that prevailed on November 1, 1997 "unless either collective bargaining so permits or a distribution company proves in evidentiary hearings before the Department that a staffing level below that of November 1, 1997 will not adversely affect the quality of service required by the Department's § 1E standards" (UWUA Response at 2, citing D.T.E. 99-84-B at 13). As support for its position, UWUA notes that the Department directed "each of the electric or gas companies who has an SQ plan and who chooses not to petition for a G.L. c. 164, § 94 rate increase, to file a new SQ plan . . ." (id., citing D.T.E. 99-84-B at 13).

Bay State asserts that it is exempt from the G.L. c. 164, § 1E requirement that its present staffing levels be tied to its November 1, 1997 levels. The Department agrees with Bay State that G.L. c. 164, § 1E mandates that the present staffing levels of a distribution company be tied to the company's November 1, 1997 levels only for a company that operates under a performance-based rate plan ("PBR"). In NSTAR Service Quality, D.T.E. 01-71A at 8 (2002), we noted that the G.L. c. 164, § 1E requirement applies to companies that file PBRs. Department precedent defines PBRs as featuring annual filings based on a predetermined formula that considers inflation and industry-wide productivity. Eastern-Colonial Acquisition, D.T.E. 98-128, at 16-17 (1999); Eastern-Essex Acquisition, D.T.E. 98-27, at 16 (1998). The Department recognizes that Bay State is not operating under a PBR at this time. Therefore, we also agree with Bay State that it is not required under G.L. c. 164, § 1E to submit an SQ plan with staffing level benchmarks based on staffing levels in existence on November 1, 1997.

There are, however, multiple sources of the Department's authority to investigate a distribution company's staffing levels and to include an SQ measure for staffing levels. First, the Department has broad and general supervisory powers over distribution companies pursuant to G.L. c. 164, §§ 76 and 93. This includes the power to insure that distribution companies retain sufficient numbers of employees to guarantee a safe and secure supply of gas and electricity and to provide adequate customer service. In addition, G.L. c. 164, § 1F(7) directs the Department to oversee quality and reliability of service and to require that quality and reliability are the same as or better than levels that exist on November 1, 1997. Section 1F(7) also gives the Department authority apart from § 1E to establish SQ standards, including standards for customer satisfaction, service outages, and public and employee safety.

The Department has consistently stated that staffing levels are an important element of reliable service and employee safety. See, e.g., NSTAR Service Assessment, D.T.E. 01-65, at 16 (2002); Western Massachusetts Electric Company Service Assessment, D.T.E. 01-66, at 12 (2002); Fitchburg Gas and Electric Light Company Service Assessment, D.T.E. 01-67, at 11 (2002); Massachusetts Electric Company Service Assessment, D.T.E. 01-68, at 11 (2002).[5] Recognizing the importance of staffing levels to SQ, the Department included a staffing level measure in the Guidelines at § IV. Also, the Guidelines at § IV state that a staffing level benchmark will be determined on a company-specific basis. Staffing level data are a necessary precondition to the creation of a future staffing level benchmark. Furthermore, the Department finds that there is value in having all distribution companies report their staffing levels, even prior to establishing staffing level benchmarks as part of a PBR or as a result of investigation. Therefore, the Department directs Bay State to provide staffing level data for the past ten years, if available, including data for the year 1997.

Finally, the Department considers Bay State's proposed footnote to be unnecessary and potentially confusing. Therefore, the Department rejects Bay State's proposal to add a footnote claiming that it need not tie staffing levels to its November 1, 1997 staffing levels.[6] For the reasons stated above, the Department does not accept Bay State's proposed amendment to the Telephone Service Factor for the reporting of emergency calls in § II.A, or the proposed footnote to the Staffing Level Benchmarks in § IV. Therefore, the Department rejects Bay State's SQ plan as filed. The Department directs Bay State to file within three days of this Order a revised SQ plan as follows:

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5 In these Orders, the Department stated that "[t]he adequacy of properly trained staff to maintaining good service and to restoring service in a timely way after an outage is a matter of great importance."

6 Our determination regarding staffing levels in this Letter Order effectively addresses the issues raised in Bay State's Motion and UWUA's Response. Therefore, we need not separately, or further, rule on that Motion.

1. Include language in § II.A of Bay State's SQ plan from the Guidelines at § II.A that adopts the Department's 20-second Telephone Service Factor for emergency call reporting; and

2. Omit the footnote in § IV in Bay State's SQ plan regarding November 1, 1997 staffing levels.

Effective Date

We next turn to the issue of determining an effective date for Bay State's SQ plan. The Department developed the Guidelines pursuant to G.L. c. 164, § 1E for inclusion in PBR plans to be submitted by gas and electric distribution companies. The Guidelines also apply to those companies who have sought approval of a merger-related rate plan. D.T.E. 99-84, Letter Order at 3-6 (April 17, 2002); NSTAR Service Quality, D.T.E. 01-71A at 8-9, 12-18 (2002); MECo Service Quality, D.T.E. 01-71B at 16-26 (2002).

Bay State is not operating under a PBR. On March 20, 1998, however, the Company petitioned for approval of an acquisition-related rate plan. NIPSCO/Bay State Acquisition, D.T.E. 98-31 (1998). The Department approved the acquisition-related rate plan but noted the petitioners did not present a SQ proposal beyond November 1, 1999. Id. at 31-32. Therefore, the Department directed Bay State to continue its then in-place SQ Index until such time as Bay State proposed any amendments to the SQ Index. Id. In 1999, Bay State petitioned the Department to modify this SQ Index but the Department stated that no action would be taken on Bay State's petition pending the outcome of D.T.E. 99-84. D.T.E. 99-84, Notice of Inquiry at 4, n.5 (October 29, 1999). Later, in D.T.E. 99-84, at 41, we directed Bay State to file a new SQ proposal in accordance with the Guidelines. Therefore, Bay State's SQ plan, when approved, will replace Bay State's SQ Index and be effective as of January 1, 2002.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner